



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

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HOUSE BILL NO. 315

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SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Allen

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔ Section 1. KRS 510.155 is amended to read as follows:

2 (1) It shall be unlawful for any person to knowingly use a communications system,
3 including computers, computer networks, computer bulletin boards, cellular
4 telephones, or any other electronic means, for the purpose of procuring or
5 promoting the use of a minor, or a peace officer posing as a minor if the person
6 believes that the peace officer is a minor or is wanton or reckless in that belief, for
7 any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080,
8 510.090, 510.110, 529.100 where that offense involves commercial sexual activity,
9 or 530.064(1)(a), or KRS Chapter 531.

10 (2) No person shall be convicted of this offense and an offense specified in KRS
11 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to
12 consummate in the commission of the same offense with the same minor or peace
13 officer.

14 (3) ***The solicitation of a minor through electronic communication under subsection***
15 ***(1) of this section shall be prima facie evidence of the person's intent to commit***
16 ***the offense even if the meeting did not occur.***

17 (4) ***This section shall apply to electronic communications originating within or***
18 ***received within the Commonwealth.***

19 (5) A violation of this section is punishable as a Class D felony.

20 ➔ Section 2. KRS 508.130 is amended to read as follows:

21 As used in KRS 508.130 to 508.150, unless the context requires otherwise:

22 (1) (a) To "stalk" means to engage in an intentional course of conduct:

- 23 1. Directed at a specific person or persons;
- 24 2. Which seriously alarms, annoys, intimidates, or harasses the person or
- 25 persons; and

1 3. Which serves no legitimate purpose.

2 (b) The course of conduct shall be that which would cause a reasonable person to
3 suffer substantial mental distress.

4 (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts,
5 evidencing a continuity of purpose. One (1) or more of these acts may include the
6 use of any equipment, instrument, machine, or other device by which
7 communication or information is transmitted, including computers, the Internet
8 or other electronic network, cameras or other recording devices, telephones or
9 other personal communications devices, scanners or other copying devices, and
10 any device that enables the use of a transmitting device. Constitutionally protected
11 activity is not included within the meaning of "course of conduct." If the defendant
12 claims that he was engaged in constitutionally protected activity, the court shall
13 determine the validity of that claim as a matter of law and, if found valid, shall
14 exclude that activity from evidence.

15 (3) "Protective order" means:

- 16 (a) An emergency protective order or domestic violence order issued under KRS
17 403.715 to 403.785;
- 18 (b) A foreign protective order, as defined in KRS 403.7521(1);
- 19 (c) An order issued under KRS 431.064;
- 20 (d) A restraining order issued in accordance with KRS 508.155; and
- 21 (e) Any condition of a bond, conditional release, probation, parole, or pretrial
22 diversion order designed to protect the victim from the offender.

23 ➔Section 3. KRS 531.010 is amended to read as follows:

24 As used in this chapter:

- 25 (1) "Distribute" means to transfer possession of, whether with or without consideration.
- 26 (2) "Matter" means any book, magazine, newspaper, or other printed or written material
27 or any picture, drawing, photograph, motion picture, live image transmitted over

1 the Internet or other electronic network, or other pictorial representation or any
 2 statue or other figure, or any recording transcription or mechanical, chemical or
 3 electrical reproduction or any other articles, equipment, machines, or materials.

4 (3) "Obscene" means:

5 (a) To the average person, applying contemporary community standards, the
 6 predominant appeal of the matter, taken as a whole, is to prurient interest in
 7 sexual conduct; and

8 (b) The matter depicts or describes the sexual conduct in a patently offensive way;
 9 and

10 (c) The matter, taken as a whole, lacks serious literary, artistic, political, or
 11 scientific value.

12 (4) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality,
 13 sexual intercourse, or deviant sexual intercourse; or physical contact with the
 14 genitals, flagellation, or excretion for the purpose of sexual stimulation or
 15 gratification.

16 ➔ Section 4. KRS 531.300 is amended to read as follows:

17 As used in KRS 531.080 and 531.310 to 531.370:

18 (1) "Distribute" means to transfer possession of, whether with or without consideration;

19 (2) "Matter" means any book, magazine, newspaper, or other printed or written material
 20 or any picture, drawing, photograph, motion picture, live image transmitted over

21 the Internet or other electronic network, or other pictorial representation or any
 22 statue or other figure, or any recording transcription or mechanical, chemical or
 23 electrical reproduction or any other articles, equipment, machines, or materials;

24 (3) "Obscene" means the predominate appeal of the matter taken as a whole is to a
 25 prurient interest in sexual conduct involving minors;

26 (4) "Sexual conduct by a minor" means:

27 (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual

- 1 intercourse, or deviant sexual intercourse, actual or simulated;
- 2 (b) Physical contact with, or willful or intentional exhibition of the genitals;
- 3 (c) Flagellation or excretion for the purpose of sexual stimulation or gratification;
- 4 or
- 5 (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed
- 6 human male or female genitals, pubic area or buttocks, or the female breast,
- 7 whether or not subsequently obscured by a mark placed thereon, or otherwise
- 8 altered, in any resulting motion picture, photograph or other visual
- 9 representation, exclusive of exposure portrayed in matter of a private, family
- 10 nature not intended for distribution outside the family;
- 11 (5) "Performance" means any play, motion picture, photograph or dance. Performance
- 12 also means any other visual representation exhibited before an audience;
- 13 (6) "Sexual performance" means any performance or part thereof which includes sexual
- 14 conduct by a minor; and
- 15 (7) "Promote" means to prepare, publish, print, procure or manufacture, or to offer or
- 16 agree to do the same.

17 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 17.500 TO 17.580 IS

18 CREATED TO READ AS FOLLOWS:

19 (1) As used in this section:

20 (a) "Instant messaging or chat room program," means a software program

21 that allows two (2) or more persons to communicate over the Internet in

22 real time using typed text; and

23 (b) "Social networking Web site," means an Internet Web site that:

- 24 1. Facilitates the social introduction between two (2) or more persons;
- 25 2. Allows a person to create a Web page or a personal profile; and
- 26 3. Provides a person who visits the Web site the opportunity to
- 27 communicate with another person.

(2) No registrant, as defined in KRS 17.500, shall knowingly or intentionally use a social networking Web site or an instant messaging or chat room program if that Web site or program allows a person who is less than eighteen (18) years of age to access or use the Web site or program.

(3) Any person who violates subsection (2) of this section shall be guilty of a Class A misdemeanor.

➔Section 6. KRS 17.510 is amended to read as follows:

(1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.

(2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.

(3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

(4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA

1 sample, and photograph. Thereafter, the registrant shall return to the appropriate
2 local probation and parole office not less than one (1) time every two (2) years in
3 order for a new photograph to be obtained, and the registrant shall pay the cost of
4 updating the photo for registration purposes. Any registrant who has not provided a
5 DNA sample as of July 1, 2008, shall provide a DNA sample to the appropriate
6 local probation and parole office when the registrant appears for a new photograph
7 to be obtained. Failure to comply with this requirement shall be punished as set
8 forth in subsection (11) of this section.

9 (5) (a) The appropriate probation and parole office shall send the registration form
10 containing the registrant information, fingerprint card, and photograph, and
11 any special conditions imposed by the court or the Parole Board, to the
12 Information Services Center, Department of Kentucky State Police, Frankfort,
13 Kentucky 40601. The appropriate probation and parole office shall send the
14 DNA sample to the Department of Kentucky State Police forensic laboratory
15 in accordance with administrative regulations promulgated by the cabinet.

16 (b) The Information Services Center, upon request by a state or local law
17 enforcement agency, shall make available to that agency registrant
18 information, including a person's fingerprints and photograph, where
19 available, as well as any special conditions imposed by the court or the Parole
20 Board.

21 (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or
22 does not disseminate, registrant information in good faith compliance with the
23 requirements of this subsection shall be immune from criminal and civil
24 liability for the dissemination or lack thereof.

25 (6) Any person who has been convicted in a court of any state or territory, a court of the
26 United States, or a similar conviction from a court of competent jurisdiction in any
27 other country, or a court martial of the United States Armed Forces of a sex crime

1 or criminal offense against a victim who is a minor and who has been notified of the
2 duty to register by that state, territory, or court, or who has been committed as a
3 sexually violent predator under the laws of another state, laws of a territory, or
4 federal laws, or has a similar conviction from a court of competent jurisdiction in
5 any other country, shall comply with the registration requirement of this section,
6 including the requirements of subsection (4) of this section, and shall register with
7 the appropriate local probation and parole office in the county of residence within
8 five (5) working days of relocation. No additional notice of the duty to register shall
9 be required of any official charged with a duty of enforcing the laws of this
10 Commonwealth.

- 11 (7) If a person is required to register under federal law or the laws of another state or
12 territory, or if the person has been convicted of an offense under the laws of another
13 state or territory that would require registration if committed in this
14 Commonwealth, that person upon changing residence from the other state or
15 territory of the United States to the Commonwealth or upon entering the
16 Commonwealth for employment, to carry on a vocation, or as a student shall
17 comply with the registration requirement of this section, including the requirements
18 of subsection (4) of this section, and shall register within five (5) working days with
19 the appropriate local probation and parole office in the county of residence,
20 employment, vocation, or schooling. A person required to register under federal law
21 or the laws of another state or territory shall be presumed to know of the duty to
22 register in the Commonwealth. As used in this subsection, "employment" or "carry
23 on a vocation" includes employment that is full-time or part-time for a period
24 exceeding fourteen (14) days or for an aggregate period of time exceeding thirty
25 (30) days during any calendar year, whether financially compensated, volunteered,
26 or for the purpose of government or educational benefit. As used in this subsection,
27 "student" means a person who is enrolled on a full-time or part-time basis, in any

1 public or private educational institution, including any secondary school, trade or
 2 professional institution, or institution of higher education.

3 (8) The registration form shall be a written statement signed by the person which shall
 4 include registrant information, including an up-to-date photograph of the registrant
 5 for public dissemination.

6 (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall
 7 not be considered an address.

8 (10) (a) If the residence address of any registrant changes, but the registrant remains in
 9 the same county, the person shall register, on or before the date of the change
 10 of address, with the appropriate local probation and parole office in the county
 11 in which he or she resides.

12 (b) 1. If the registrant changes his or her residence to a new county, the person
 13 shall notify his or her current local probation and parole office of the
 14 new residence address on or before the date of the change of address.

15 2. The registrant shall also register with the appropriate local probation and
 16 parole office in the county of his or her new residence no later than five
 17 (5) working days after the date of the change of address.

18 (c) If the electronic mail address or any instant messaging, chat, or other
 19 Internet communication name identities of any registrant changes or if the
 20 registrant creates or uses any new Internet communication name identities,
 21 the registrant shall register the change or new identity, on or before the date
 22 of the change or use or creation of the new identity, with the appropriate
 23 local probation and parole office in the county in which he or she resides.

24 (d) 1. As soon as a probation and parole office learns of the person's new
 25 address under paragraph (b)1. of this subsection, that probation and
 26 parole office shall notify the appropriate local probation and parole
 27 office in the county of the new address of the effective date of the new

1 address.

2 2. As soon as a probation and parole office learns of the person's new
3 address under paragraph (b)2. of this subsection or learns of the
4 registrant's new or changed electronic mail address or instant
5 messaging, chat, or other Internet communication name identities
6 under paragraph (c) of this subsection, that office shall forward this
7 information as set forth under subsection (5) of this section.

8 (11) Any person required to register under this section who knowingly violates any of
9 the provisions of this section or prior law is guilty of a Class D felony for the first
10 offense and a Class C felony for each subsequent offense.

11 (12) Any person required to register under this section or prior law who knowingly
12 provides false, misleading, or incomplete information is guilty of a Class D felony
13 for the first offense and a Class C felony for each subsequent offense.

14 (13) (a) The cabinet shall verify the addresses and the electronic mail address and
15 any instant messaging, chat, or other Internet communication name
16 identities of individuals required to register under this section. Verification
17 shall occur at least once every ninety (90) days for a person required to
18 register under KRS 17.520(2) and at least once every calendar year for a
19 person required to register under KRS 17.520(3). If the cabinet determines
20 that a person has moved or has created or changed any electronic mail
21 address or any instant messaging, chat, or other Internet communication
22 name identities used by the person without providing his or her new address,
23 electronic mail address, or instant message, chat, or other Internet
24 communication name identity to the appropriate local probation and parole
25 office or offices as required under subsection (10)(a),~~and~~ (b) and (c) of this
26 section, the cabinet shall notify the appropriate local probation and parole
27 office of the new address or electronic mail address or any instant

1 *messaging, chat, or other Internet communication name identities used by*
 2 *the person.* The office shall then forward this information as set forth under
 3 subsection (5) of this section. The cabinet shall also notify the appropriate
 4 court, Parole Board, and appropriate Commonwealth's attorney, sheriff's
 5 office, probation and parole office, corrections agency, and law enforcement
 6 agency responsible for the investigation of the report of noncompliance.

7 (b) An agency that receives notice of the noncompliance from the cabinet under
 8 paragraph (a) of this subsection:

- 9 1. Shall consider revocation of the parole, probation, or conditional
 10 discharge of any person released under its authority; and
- 11 2. Shall notify the appropriate county or Commonwealth's Attorney for
 12 prosecution.

13 ➔Section 7. KRS 17.580 is amended to read as follows:

14 (1) The Department of Kentucky State Police shall establish a Web site available to the
 15 public. The Web site shall display:

16 (a) The registrant information, except for *electronic mail address or any instant*
 17 *messaging, chat, or other Internet communication name identities included*
 18 *in a registrant's registration data, as well as* information that identifies a
 19 victim, DNA samples, fingerprints, and Social Security numbers, obtained by
 20 the Information Services Center, Department of Kentucky State Police, under
 21 KRS 17.510;

22 (b) The sex offender information, except for information that identifies a victim,
 23 DNA samples, Social Security numbers, and vehicle registration data,
 24 obtained by the Information Services Center, Department of Kentucky State
 25 Police, under KRS 17.510 prior to April 11, 2000; and

26 (c) The registrant's conviction, the elements of the offense for which the registrant
 27 was convicted, whether the registrant is currently on probation or parole, and

1 whether the registrant is compliant or noncompliant.

2 The Web site shall be updated every day except for Saturdays, Sundays, and state
3 holidays.

4 (2) The information pertaining to an individual shall be maintained on the Web site so
5 long as that individual is registered in accordance with KRS 17.500 to 17.580.

6 (3) The Web site shall provide public access to electronic mail addresses and any
7 instant messaging, chat, or other Internet communication name identities used by
8 registrants solely by use of a search function on the Web site through which
9 members of the public may enter an electronic mail address or any instant
10 messaging, chat, or other Internet communication name identity and receive an
11 answer as to whether the entered identifier is included in the registrant
12 information for any registrant.

13 (4) The following language shall be prominently displayed on the Web site: "UNDER
14 KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS
15 WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A
16 CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE
17 COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE
18 SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS
19 WEB SITE."

20 ~~(5)~~(4) (a) Any Department of Kentucky State Police employee who disseminates,
21 or does not disseminate, registrant information or sex offender information in
22 good faith compliance with the requirements of this section shall be immune
23 from criminal and civil liability for the dissemination or lack thereof.

24 (b) Any person, including an employee of a sheriff's office, acting in good faith in
25 disseminating, or not disseminating, information previously disseminated by
26 the Department of Kentucky State Police shall be immune from criminal and
27 civil liability for the dissemination or lack thereof.

1 ~~(6)~~~~(5)~~ The cabinet shall establish a toll-free telephone number for a person to call to
 2 learn the identity of the Web site created in this section and the location of public
 3 access to the Web site in the county where the person resides.

4 ~~(7)~~~~(6)~~ In addition to the Web site, a local law enforcement agency may provide
 5 personal notification regarding the registrants located in its jurisdiction. Any
 6 notification shall contain the warning specified in subsection (3) of this section.

7 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 500 IS CREATED TO
 8 READ AS FOLLOWS:

9 (1) Notwithstanding Section 10 of this Act, all personal property which is not used as
 10 a permanent residence in this state which is used in connection with or acquired
 11 as a result of a violation or attempted violation of any of the statutes set out in
 12 subsection (3) of this section shall be subject to forfeiture under the same terms,
 13 conditions, and defenses and using the same process as set out in KRS 218A.405
 14 to 218A.460 for property subject to forfeiture under that chapter.

15 (2) Administrative regulations promulgated under KRS 218A.420 shall govern
 16 expenditures derived from forfeitures under this section to the same extent that
 17 they govern expenditures from forfeitures under KRS 218A.405 to 218A.460.

18 (3) The following offenses may trigger forfeiture of personal property under
 19 subsection (1) of this section:

20 (a) Section 5 of this Act;

21 (b) KRS 508.140 and 508.150 involving the use of any equipment, instrument,
 22 machine, or other device by which communication or information is
 23 transmitted, including computers, the Internet or other electronic network,
 24 cameras or other recording devices, telephones or other personal
 25 communications devices, scanners or other copying devices, and any device
 26 that enables the use of a transmitting device;

27 (c) KRS 510.155;

1 (d) KRS 530.064(1)(a);

2 (e) KRS 531.030;

3 (f) KRS 531.040

4 (g) KRS 531.310;

5 (h) KRS 531.320;

6 (i) KRS 531.335;

7 (j) KRS 531.340;

8 (k) KRS 531.350;

9 (l) KRS 531.360; and

10 (m) KRS 531.370.

11 ➔Section 9. KRS 16.210 is amended to read as follows:

12 (1) Property taken by the Department of Kentucky State Police shall be placed with the
13 property officer of the post to which the officer is assigned.

14 (2) Property which is forfeited may be disposed of as provided by KRS 500.090 or
15 Section 8 of this Act, whichever is applicable; however, the proceeds of any sale
16 shall go to the state or be distributed as otherwise provided by law.

17 (3) All other property may be disposed of as provided in KRS 67.592 and 67.594
18 except that all proceeds from any sale shall go to the state.

19 ➔Section 10. KRS 500.090 is amended to read as follows:

20 (1) Except as provided in Section 8 of this Act, all property which is subject to
21 forfeiture under any section of the Kentucky Penal Code shall be disposed of in
22 accordance with this section.

23 (a) Property other than firearms which is forfeited under any section of this code
24 may, upon order of the trial court, be destroyed by the sheriff of the county in
25 which the conviction was obtained.

26 (b) Property other than firearms which is forfeited under any section of this code
27 may, upon order of the trial court, be sold at public auction. The expenses of

1 keeping and selling such property and the amount of all valid recorded liens
 2 that are established by intervention as being bona fide shall be paid out of the
 3 proceeds of the sale. The balance shall be paid to:

- 4 1. The state, if the property was seized by an agency of the state or peace
 5 officer thereof;
- 6 2. The county, if the property was seized by the sheriff or an agency or
 7 peace officer of the county;
- 8 3. The Department of Fish and Wildlife Resources, if the property was
 9 seized by a peace officer of the Department of Fish and Wildlife or was
 10 seized by any other officer for violation of KRS Chapter 150;
- 11 4. The city, if the property was seized by the city or by an agency or peace
 12 officer thereof and the property was delivered to the city property clerk;
- 13 5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten
 14 percent (10%) of the proceeds), if the property was seized by the city or
 15 by an agency or peace officer thereof and the property was delivered to
 16 the sheriff or the county police; or
- 17 6. The state, if the property was seized by any combination of agencies
 18 listed above.

- 19 (c) Subject to the duty to return confiscated firearms and ammunition to innocent
 20 owners pursuant to this section, all firearms and ammunition confiscated by a
 21 state or local law enforcement agency, all firearms ordered forfeited by a
 22 court, and all abandoned firearms and ammunition coming into the custody of
 23 a state or local law enforcement agency and not retained for official use shall
 24 be transferred to the Department of Kentucky State Police for disposition as
 25 provided by KRS 16.220. The transfer shall occur not more than ninety (90)
 26 days after the abandonment of the firearm or ammunition to the law
 27 enforcement agency or not more than ninety (90) days after its confiscation,

1 unless a court requires the firearm or ammunition for use as evidence, in
2 which case it shall be transferred to the Department of Kentucky State Police
3 not more than ninety (90) days following the order of forfeiture by the court or
4 after the court returns the firearm or ammunition from use as evidence. Prior
5 to the sale of any firearm or ammunition, the law enforcement agency shall
6 make a bona fide attempt to determine if the firearm or ammunition to be sold
7 has been stolen or otherwise unlawfully obtained from an innocent owner and
8 return the firearm and ammunition to its lawful innocent owner, unless that
9 person is ineligible to purchase a firearm under federal law. This subsection
10 relating to auction of firearms and ammunition shall not apply to firearms and
11 ammunition auctioned by the Department of Fish and Wildlife that may be
12 sold to individual purchasers residing in Kentucky who are eligible under
13 federal law to purchase firearms and ammunition of the type auctioned.

14 (d) If property which is forfeited under any section of this code is determined by
15 the trial court to be worthless, encumbered with liens in excess of its value, or
16 otherwise a burdensome asset, the court may abandon any interest in such
17 property. Property which is abandoned pursuant to this section shall be
18 returned to the lawful claimant upon payment of expenses for keeping the
19 property.

20 (e) Property which is forfeited under any section of this code may, upon order of
21 the trial court, be retained for official use in the following manner. Property
22 which has been seized by an agency of the state may be retained for official
23 state use. Property which has been seized by an agency of county, city, or
24 urban-county government may be retained for official use by the government
25 whose agency seized the property or for official state use. Property seized by
26 any other unit of government may be retained only for official state use. The
27 expenses for keeping and transferring such property shall be paid by the unit

1 of government by which the property is retained.

2 (2) Money which has been obtained or conferred in violation of any section of this code
3 shall, upon conviction, be forfeited for the use of the state. This subsection shall not
4 apply when, during the course of the proceeding in which the conviction is
5 obtained, the person from whom said money was unlawfully acquired is identified.

6 (3) Property forfeited under any section of this code shall be disposed of in accordance
7 with this section only after being advertised pursuant to KRS Chapter 424. This
8 subsection shall not apply to property which is designed and suitable only for
9 criminal use or to money forfeited under subsection (2) of this section.

10 (4) The trial court shall remit the forfeiture of property when the lawful claimant:

11 (a) Asserts his or her claim before disposition of the property pursuant to this
12 section;

13 (b) Establishes his or her legal interest in the property; and

14 (c) Establishes that the unlawful use of the property was without his or her
15 knowledge and consent. This subsection shall not apply to a lienholder of
16 record when the trial court elects to dispose of the property pursuant to
17 subsection (1)(b) of this section.

18 (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.

19 (6) Before property which has had its identity obscured in violation of KRS 514.120
20 may be sold or retained for official use as provided in this section, the court shall
21 cause a serial or other identifying number to be placed thereon, and a record of the
22 number assigned shall be placed in the court order authorizing the sale or retention
23 of the property. This number shall be assigned, whenever applicable, in consultation
24 with the Department of Kentucky State Police and any other state or federal
25 regulatory agency. The purchaser of the property shall be given a document stating
26 that the property had been forfeited pursuant to law and that a number, shown on
27 the document, has been assigned which shall be deemed as compliance of the owner

1 with KRS 514.120. When property is returned to an owner pursuant to this section
 2 and its identity has been obscured by another person in violation of KRS 514.120,
 3 the court shall provide a document to the owner relieving him or her of liability for
 4 its continued possession. This document shall serve as evidence of compliance with
 5 KRS 514.120 by the owner or any person to whom he or she lawfully disposes of
 6 the property. This section shall not apply to any person after property has been sold
 7 or returned in compliance with this section who violates the provisions of KRS
 8 514.120 with respect to that property.

- 9 (7) Before forfeiture of any property under this section, it shall be the duty of the trial
 10 court to determine if a lawful owner or claimant to the property has been identified
 11 or is identifiable. If a lawful owner or claimant has been identified or is identifiable,
 12 the court shall notify the owner or claimant that the property is being held and
 13 specify a reasonable period of time during which the claim may be made or may, in
 14 lieu thereof, order the return of the property to the lawful owner or claimant. If the
 15 lawful owner or claimant does not assert his or her claim to the property after
 16 notification or if he or she renounces his or her claim to the property, the property
 17 shall be disposed of as provided in this section. It shall be the duty of all peace
 18 officers and other public officers or officials having knowledge of the lawful owner
 19 or claimant of property subject to forfeiture to report the same to the trial court
 20 before the act of forfeiture occurs.

21 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 500 IS CREATED TO
 22 READ AS FOLLOWS:

23 (1) In any investigation relating to an offense involving KRS 510.155, 530.064(1)(a),
 24 531.030, 531.040, 531.310, 531.320, 531.335, 531.340, 531.350, 531.360, or
 25 531.370, and upon reasonable cause to believe that an Internet service account
 26 has been used in the exploitation or attempted exploitation of children, or in any
 27 investigation of a violation of Section 5 of this Act, KRS 508.140, 508.150,

525.070, or 525.080 where there is reasonable cause to believe that an Internet Service Account has been used in the commission of the offense, the Attorney General may issue in writing and cause to be served a subpoena requiring the production and testimony described in subsection (2) of this section.

(2) Except as provided in subsection (3) of this section, a subpoena issued under this section may require the production of any records or other documentation relevant to the investigation including:

1. Electronic mail address;
2. Internet username;
3. Internet protocol address;
4. Name of account holder;
5. Billing and service address;
6. Telephone number;
7. Account status;
8. Method of access to the Internet; and
9. Automatic number identification records if access is by modem.

(3) The provider of electronic communication service or remote computing service shall not disclose the following pursuant to a subpoena issued under this section but shall disclose the information in obedience to a warrant:

- (a) In-transit electronic communications;
- (b) Account memberships related to Internet groups, newsgroups, mailing lists or specific areas of interest;
- (c) Account passwords; and
- (d) Account content including:
 1. Electronic mail in any form;
 2. Address books, contacts, or buddy lists;
 3. Financial records;

1 4. Internet proxy content or Web surfing history; and

2 5. Files or other digital documents stored with the account or pursuant
3 to use of the account.

4 (4) At any time before the return date specified on the subpoena, the person
5 summoned may, in the District Court in which the person resides or does
6 business, petition for an order modifying or setting aside the subpoena, or a
7 prohibition of disclosure by a court.

8 (5) A subpoena under this section shall describe the objects required to be produced
9 and shall prescribe a return date with a reasonable period of time within which
10 the objects can be assembled and made available.

11 (6) If no case or proceeding arises from the production of records or other
12 documentation pursuant to this section within a reasonable time after those
13 records or documentation are produced, the Attorney General shall either destroy
14 the records and documentation or return them to the person who produced them.

15 (7) A subpoena issued under this section may be served by any person who is at least
16 eighteen (18) years of age and who is designated in the subpoena to serve it.
17 Service upon a natural person may be made by personal delivery of the subpoena
18 to him. Service may be made upon a corporation or partnership or other
19 unincorporated association which is subject to suit under its common name, by
20 delivering the subpoena to an officer, to a managing or general agent, or to any
21 other agent authorized by appointment or by law to receive service of process. The
22 affidavit of the person serving the subpoena together with a true copy thereof
23 shall be proof of service.

24 (8) Except as provided in this section any information, records or data reported or
25 obtained pursuant to subpoena under this section shall remain confidential and
26 shall not be further disclosed unless in connection with a criminal case related to
27 the subpoenaed materials.

1 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO
 2 READ AS FOLLOWS:

3 (1) For purposes of this section:

4 (a) "Electronic mail message," means a message sent to a unique destination
 5 that consists of a unique user name or mailbox and a reference to an
 6 Internet domain, whether or not displayed, to which the message can be
 7 sent or delivered; and

8 (b) "Identifying information," means specific details that can be used to access
 9 a person's financial accounts or to obtain goods or services, including but
 10 not limited to the person's Social Security number, driver's license number,
 11 bank account number, credit or debit card number, personal identification
 12 number, automated or electronic signature, unique biometric data, or
 13 account password.

14 (2) A person is guilty of phishing if he or she knowingly or intentionally solicits,
 15 requests, or takes any action to induce another person to provide identifying
 16 information by means of a Web page, electronic mail message, or otherwise using
 17 the Internet, by representing himself or herself either directly or by implication,
 18 to be a third person without the authority or approval of such other person.

19 (3) In any prosecution for a violation of this section, the Commonwealth is not
 20 required to establish, and it is no defense that:

21 (a) A person other than the defendant who violated this section has not been
 22 convicted, apprehended, or identified; or

23 (b) Some of the acts constituting a violation of this section did not occur in
 24 Kentucky or were not a criminal offense or elements of a criminal offense
 25 where they did occur.

26 (4) Phishing is a Class D felony.

Wayne O. Starks
Speaker-House of Representatives

Paul H. Williams
President of Senate

Attest: Sean C. Durgin
Chief Clerk of House of Representatives

Approved At J. B. Boehm
Governor

Date March 25, 2009